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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SUTTON 58 OWNER LLC, a New York Limited Case No.: 16-_____ (SHL)
Liability Company,

Debtor.

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DECLARATION IN ACCORDANCE WITH S.D.N.Y. LBR 1007-2 (a)

Joseph Beninati, as the managing member of debtor Sutton 58 Owner LLC, a New York Limited Liability Company ("Sutton Owner NY"), declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. On July 12, 2016 (the "Petition Date"), Sutton Owner NY filed a voluntary petition (the "Petition") for reorganization under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Court").

2. In accordance with Rule 1007-2(a) of the Local Rules of Bankruptcy Procedure for the Southern District of New York, I submit this declaration (the "Declaration") in support of Sutton Owner NY's Petition.

3. Except as otherwise noted herein, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents and information, documents turned over by the Debtor's prior counsel Herrick, Feinstein LLP ("Herrick"), or my opinion

based upon my experience and knowledge of Sutton Owner NY's operations and financial condition.

A. **Sutton Owner NY's Filing**

4. I am the managing member of Sutton Owner NY.

5. I am also the managing member of BH Sutton Owner LLC, a Delaware Limited Liability Company ("BH Sutton"). BH Sutton owns 100% of BH Sutton Mezz LLC, a Delaware Limited Liability Company ("Sutton Mezz DE"). Sutton Mezz DE owns 100% of Sutton Owner NY. As set forth more fully below, Sutton Mezz DE is a debtor and debtor-in-possession in jointly-administered Chapter 11 cases pending before this Court under case no. 16-10455 (SHL). BH Sutton, Sutton Mezz DE and Sutton Owner NY shall be collectively referred to as Debtors.

6. Sutton Owner NY remains in possession of its assets, is operating its business and is managing its affairs as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee, examiner or committee of creditors has been appointed in this case.

7. Sutton Owner NY is not a small business debtor as defined by Bankruptcy Code § 101(51D).

8. Sutton Owner NY does not have any employees.

9. Sutton Owner NY does not have any payroll obligations for the next thirty (30) days.

10. Sutton Owner NY does not have any shares of stock that are publically held.

11. Sutton Owner NY, your declarant and the Sutton Owner NY's professionals are in possession and control of Sutton Owner NY's books and records, except that certain third parties, including Sutton Owner NY's prior lender, law firm and bookkeeping firm may have books, records and documents related to the Debtors' financial affairs.

12. Sutton Owner NY owns no assets that are physically located outside the United States.

13. Sutton Owner has never previously filed a petition for relief under the provisions of the Bankruptcy Code.

14. On February 26, 2016, Sutton Mezz DE filed for Chapter 11 reorganization in this Court under case number 16-10455 (SHL).

15. On April 6, 2016, Sutton 58 Owner LLC, a Delaware Limited Liability Company ("Sutton Owner DE") filed for Chapter 11 reorganization in this Court under case number 16-10834 (SHL).

16. The Sutton Mezz DE and Sutton Owner DE Chapter 11 cases are being jointly administered under case no. 16-10455 (SHL).

17. Sutton Owner NY intends to reorganize its financial affairs pursuant to the provisions of Chapter 11 of the Bankruptcy Code and to jointly administer its estate and assets with those of Sutton Mezz DE and Sutton Owner DE.

18. Annexed to the Petition is a schedule of the twenty (20) largest unsecured claims of Sutton Owner NY's estate.

19. As set forth herein, and in the complaint filed in this case, Sutton Owner NY has no secured creditors.

20. As of the Petition Date, there are no pending litigations against Sutton Owner NY.

21. Sutton Owner NY's Chapter 11 filing was precipitated by the discovery of an issue with respect to the ownership of certain assets and liabilities the purported merger of Sutton Owner NY and Sutton Owner DE.

22. Specifically, as set forth more fully in the complaint filed simultaneously herewith, after reviewing emails, documents turned over by Herrick, correspondence and information, Sutton Owner NY's pre-petition counsel, Herrick, purported to merge Sutton Owner NY with Sutton Owner DE. While I agreed to the purported merger concept in my capacity as a principal, the merger was agreed to and only effective in connection with a loan from Banco Inbursa, S.A., Institución de Banca Múltiple, Grupo Financiero Inbursa ("Inbursa"). The Inbursa loan never occurred. Nevertheless, as set forth more fully in the complaint, Herrick purported to effectuate the merger by filing certain unauthorized and certain defective documents with the State of New York and State of Delaware. As a result, Sutton Owner NY was never merged with Sutton Owner DE. By the complaint, Sutton Owner NY intends to attack the nature, extent and validity of liens of the purported lender and to avoid an improperly filed mortgage against Sutton Owner NY's real properties. Sutton Owner NY also seeks declaratory relief from the Court as to the purported merger.

B. Sutton Owner NY's Asset and Liability Structure

23. As reflected in the Petition, Sutton Owner NY's assets consist of certain assets acquired after the closing on the Gamma 1 Financing. After the closing, Sutton Owner NY:

- a. paid the balance of the purchase price and acquired a fee simple interest in the Real Property;
- b. paid the balances dues under the Surrender Agreements;
- c. paid the balance of the purchase prices and acquired the following zoning development rights and construction license agreements:
 - i. unused development air rights from 426 East 58th Street, New York, New York (Lot 36) totaling 13,185 square feet; and
 - ii. unused development air rights from 422 East 58th Street, New York, New York (Lot 37) totaling 21,750 square feet.

- d. made additional deposits totaling \$2,875,500.00 for the following zoning development rights and construction license agreements:
 - i. unused development air rights from 434 and 436 East 58th Street, New York, New York (Lots 31 and 33) totaling 33,442 square feet;
 - ii. unused development air rights from 440 East 58th Street, New York, New York (Lot 30) totaling 13,556 square feet;
 - iii. unused development air rights from 442 East 58th Street, New York, New York (Lot 129) totaling 16,267 square feet;
 - iv. unused development air rights from 444-446 East 58th Street, New York, New York (Lot 29) totaling 20,583 square feet;
 - v. unused development air rights from 461 East 57th Street, New York, New York (Lot 22) totaling 23,428 square feet;
 - vi. unused development air rights from 455 East 57th Street, New York, New York (Lot 19) for a bridging agreement to allow for the acquisition of unused development air rights from 461 East 57th Street, New York, New York; and
 - vii. inclusionary development air rights from Fisher Brothers for 57,000 square feet of air rights.

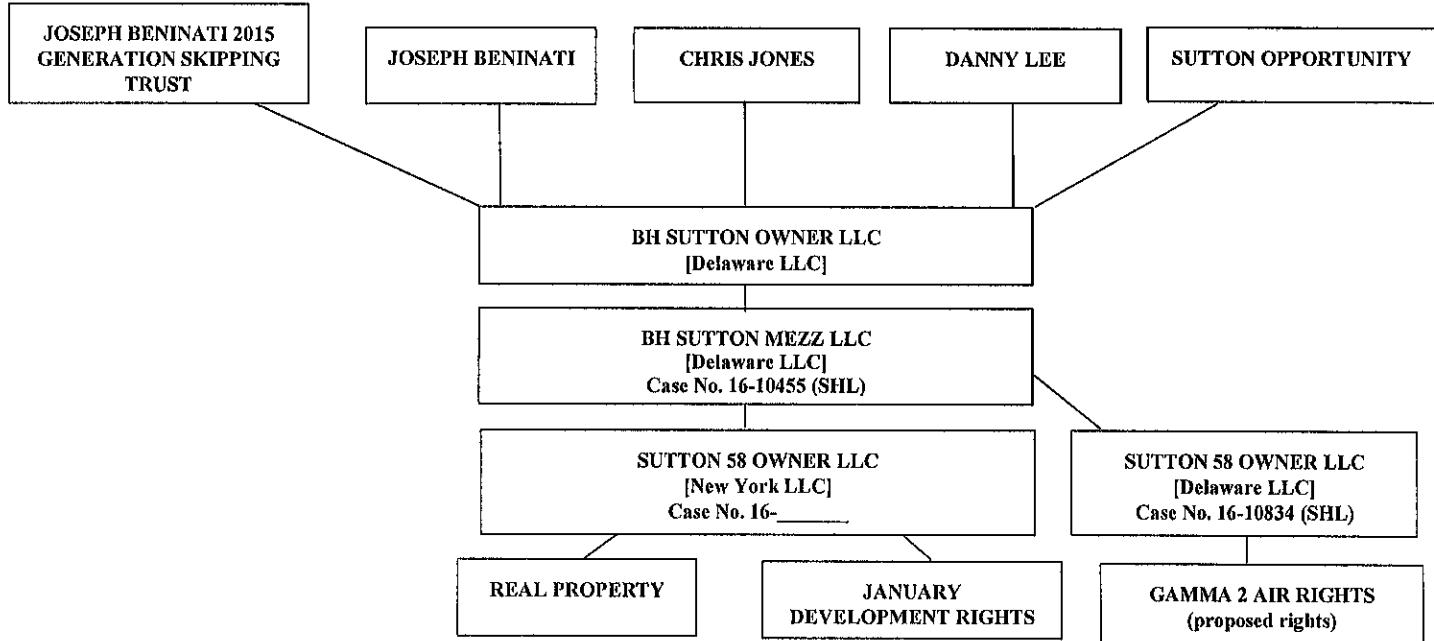
(the zoning development rights set forth in sub-paragraphs c. and d. above totaling 262,175 feet are, collectively, the "January Development Rights").

24. The deed conveying the Real Property to Sutton Owner NY expressly states that the grantee is "Sutton 58 Owner LLC, a New York limited liability company."

25. The agreements conveying the January Development Rights to Sutton Owner NY expressly state that the rights were acquired by "Sutton 58 Owner LLC, a New York limited liability company."

26. As set forth in the complaint, Sutton Owner NY has no secured creditors.

27. Below is a summary of the corporate ownership and asset structure of Sutton Owner NY, Sutton Owner DE and Sutton Mezz DE:



28. Notwithstanding the above, Sutton Owner NY intends to allow its assets to be used for the benefit of the creditors of Sutton Owner DE and Sutton Mezz DE. It is Sutton Owner NY's position, however, that Sutton 58 Associates, LLC is not secured to the Real Property or other assets of Sutton Owner NY.

29. In or about June 2015, Sutton Owner NY's note and mortgage was satisfied. The purported granting by Sutton Owner DE of a mortgage and/or liens on the Real Property and other assets owned by Sutton Owner NY in June 2015 was improper, unauthorized and ineffective as Sutton Owner DE never owned the Real Property or other assets by Deed or otherwise and had no authority to grant a mortgage in favor of Sutton 58 Associates. Neither the title company, Sutton 58 Associates' attorney nor the Debtors' prior counsel, realized the

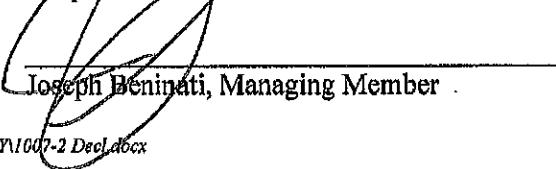
ineffective nature of the merger. As a result, Sutton Owner NY owns the assets identified on its Petition free and clear of any liens, claims or encumbrances.

30. Sutton Owner NY believes that, with the protections of this Court and the Bankruptcy Code, it will be able to restructure its business arrangements and debts and to propose a meaningful and acceptable plan of reorganization.

WHEREFORE, your declarant prays that it shall be authorized to continue in the operation and management of its business and affairs pending further Order of this Court.

**Sutton 58 Owner LLC, a New York
Limited Liability Company
Chapter 11 Debtor**

By:

 Joseph Beninati, Managing Member

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